Supreme Court, U.S.
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No. 92-623

In The

Supreme Court of the United States

October Term, 1992

RMI TITANIUM COMPANY,

Petitioner,

vs.

THE OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL LOCAL 7-629 AND WALLACE D. HEINONEN, JR.,

Respondents.

Petition For Writ Of Certiorari To The Ohio Court Of Appeals For Ashtabula County

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STATEMENT OF THE CASE

This case arises from a series of events that occurred in 1982. The only issue actually raised in the within petition concerns the correctness of a 1987 decision in this case by the Ohio Court of Appeals, Eleventh Appellate District. As will be seen below, that decision is *res judicata*.

RMI's Statement of the Case distorts the history of this litigation in order to give the appearance that there is an appealable issue present. RMI has also chosen to omit all of the facts which explain the actions of the courts below. The "facts" upon which RMI bases its petition are certainly not the facts of this case. The facts of this case are as follows:

1. The Earlier Appeal.

In 1982, Respondent Wallace G. Heinonen ("Heinonen") was an employee of Petitioner, RMI Titanium Company ("RMI"), at its metals reduction plant in Ashtabula, Ohio. The employees at RMI's plant, including Heinonen, were represented by the other Respondent in this case, the Oil, Chemical and Atomic Workers International Union, AFL-CIO, Local 7-629 ("the Union").

In January, 1982, Heinonen sustained a serious injury to his right elbow at the plant. The elbow did not heal properly, even after surgery. During this period, Heinonen could not work and was receiving worker's compensation benefits.

On June 25, 1982, RMI's physician examined Heinonen and declared that Heinonen was now capable of

working. Heinonen, however, had not yet been released for work by his own physician. His next appointment with his physician was not until July 26.

On June 28, RMI ordered Heinonen to report for work on the following day, based solely on the declaration of the company physician that Heinonen was capable of working.

Heinonen did not report for work. Instead, he submitted a letter from his own physician confirming that the physician had not yet released Heinonen to work.[1]

RMI then discharged Heinonen. RMI claimed that it had the right to discharge him based upon Section 8.21 of its labor agreement with the Union, which permitted it to discharge any employee who " . . . fails to report to work . . . after termination of a leave of absence. . . . "[2]

The Union filed a grievance protesting the discharge. The grievance was submitted to arbitration pursuant to the collective bargaining agreement between the Union and RMI. The arbitrator upheld RMI's position and sustained the discharge.

Heinonen and the Union then commenced this litigation pursuant to Section 2711.09, Ohio Revised Code, in the Common Pleas Court of Ashtabula County, Ohio (Case No. 78355). Their Complaint prayed that

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[1] At his subsequent medical examination on July 26, Heinonen's physician determined that the elbow was not healing. He, therefore, performed additional surgery in August.

[2] RMI has never claimed that any other provision of the labor agreement could be used to justify its discharge of Heinonen.

> " . . . the award of the arbitrator be vacated [and] that judgment be entered upholding the grievance filed by plaintiffs *and reinstating plaintiff Heinonen to his position with restoration of all seniority, lost wages and benefits.* . . . " (Emphasis supplied)

Ultimately, each party to the Common Pleas Court proceeding filed a motion for summary judgment. The motion filed by the Union and Heinonen asked for precisely the same relief prayed for in their Complaint, *i.e.*, vacation of the arbitration award, reinstatement of Heinonen, and restoration to Heinonen of all seniority, lost wages and benefits. RMI, on the other hand, prayed that the arbitrator's award be confirmed.

The Common Pleas Court, in a decision by Judge John G. Cardinal dated August 5, 1986, denied Heinonen and the Union's motion for summary judgment and granted RMI's motion for summary judgment. From that final judgment, Heinonen and the Union appealed to the Ohio Court of Appeals, Eleventh Appellate District (Case No. 1294).

The Court of Appeals, in an opinion and judgment entry dated October 1, 1987 (and reported at 41 Ohio App. 3d 16), reversed *both* rulings by Judge Cardinal and entered "final judgment" for Heinonen and the Union.[3] It did so for two reasons.

First, the Court of Appeals held that Section 8.21, the contractual provision that RMI claimed gave it the right

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[3] The opinion and judgment entry of the Court of Appeals are set out at Appendix (to Petition for Writ of Certiorari), pp. A14-A24.

to discharge Heinonen, did not apply by its own terms to employees who were absent due to work-related injuries. (41 Ohio App. 3d at 19-20, Appendix, pp. A20-A23.) Second, the Court of Appeals held that, regardless of any provision in the labor agreement, the discharge was unlawful by reason of the Ohio Worker's Compensation Law, Section 4123.56, Ohio Revised Code. (41 Ohio App. 3d at 20, Appendix, pp. A23-A24.) That section specifies that only an injured worker's *attending physician* can authorize his return to work. The statute provides that if an employer disputes the attending physician's decision, the employer's sole remedy is to request a hearing by a district hearing officer of the Bureau of Workers' Compensation. RMI never requested such a hearing.

The Court of Appeals held that by reason of the statute, RMI was prohibited from ordering Heinonen back to work on the basis of its own physician's assessment of his condition. Therefore, Heinonen's discharge, which was based upon his refusal to return to work without a release from his own physician, violated the public policy of Ohio, as stated in the Worker's Compensation Law. *Ibid.*

Having determined that the discharge was unlawful on these substantive grounds, the Court of Appeals ordered that " . . . the judgment of the trial court is . . . reversed and we enter final judgment for appellant." (41 Ohio App. 3d at 21, Appendix, p. A24.)

There is no question that the 1987 decision of the Court of Appeals was a final judgment upon the merits of the grievance. RMI acknowledged that fact in seeking to persuade the Ohio Supreme Court to overturn the 1987

decision. In 1988, RMI filed a "Memorandum in Support of Jurisdiction" (the Ohio equivalent of a Petition for Writ of Certiorari), in which it requested the Ohio Supreme Court to reverse the 1987 decision of the Court of Appeals. (Ohio Supreme Court Case No. 88-161) In its Memorandum, RMI argued that the Court of Appeals had acted improperly in substituting its own determination on the merits of the grievance for that of the arbitrator and in rendering a final judgment on the merits of the grievance:

> "The Court of Appeals, however, substituting its own interpretation of the agreement for that of the arbitrator, found that Heinonen was not on a 'leave of absence' within the meaning of the Agreement's senority article. In doing so, it reviewed the award under the standards of RC 2711.10 rather than the strict Federal standards applicable in labor arbitrations. The Court of Appeals also held that the arbitrator contravened public policy by upholding the discharge while Heinonen was receiving Worker's Compensation, despite the fact that the only issue properly before the arbitrator was the interpretation of the agreement and the arbitrator's interpretation does not violate the Worker's Compensation Act." (*Memorandum in Support of Jurisdiction*, p. 1; see also: *Memorandum*, pp. 11-12)

Complaining that the Court of Appeals had "improperly" decided the merits of the grievance, RMI asserted, as the basis for its 1988 appeal to the Ohio Supreme Court, the *very same claim* which it now seeks to present to this Court:

"1. The Court of Appeals was required to look to Federal labor law, not revised Code Chapter 2711, for the standards to be applied in reviewing a labor arbitration award.

"2. In an action to vacate or affirm a labor arbitration award, the interpretation of the collective bargaining agreement is a question for the arbitrator; the Court of Appeals had no authority to substitute its interpretation of the contract for the arbitrator's." *Memorandum in Support of Jurisdiction, Propositions of Law 1 and 2.*

The Ohio Supreme Court, in an order dated March 16, 1988, declined to hear RMI's appeal. RMI did not attempt to appeal further to this Court. The judgment of the Court of Appeals thereby became a final and binding adjudication upon the merits of the discharge.

2. The Within Appeal.

Following the Ohio Supreme Court's decision refusing to hear RMI's appeal, the Union demanded that RMI reinstate Heinonen to his former position with full back pay and benefits, in accordance with the final judgment of the Court of Appeals.

RMI, however, began denying that the Court of Appeals had decided the merits of the discharge. RMI began claiming that the decision of the Court of Appeals had no legal effect *at all*. RMI claimed that the Court of Appeals had *not* determined the legality of the discharge and that RMI was entitled to have the issue decided all over again by a new arbitration. This, of course, was not

true. And, it was the opposite of RMI's prior position, asserted in its appeal to the Ohio Supreme Court, that the Court of Appeals had exceeded its authority *by determining the legality of the discharge.* (pp. 5-6, *supra*)

RMI's new position focused upon an anomaly between the Opinion rendered by the Court of Appeals (Appendix, A15-24.) and its Judgment Entry (Appendix, A14.). In its Opinion, the Court of Appeals, having determined that the discharge was unlawful, concluded:

> "The judgment of the trial court is therefore reversed and we enter final judgment for appellant." (Appendix, A24.)

Simultaneously, however, it entered a Judgment Entry stating as follows:

> "For the reasons stated in the opinion of this Court, the Assignments of Error are with merit and it is the judgment and order of this Court that the judgment of the trial court is reversed." (Appendix A14.)

According to RMI, only the *Opinion* stated that the Court of Appeals was entering "final judgment;" the Judgment Entry itself merely stated that the judgment was "reversed." This, according to RMI, meant the Court of Appeals intended that the grievance be arbitrated *de novo.* RMI refused to do anything other than proceed with an arbitration *de novo.*

Heinonen consulted with several attorneys in an effort to ascertain how to enforce what he believed was a final judgment against RMI. Ultimately, Heinonen filed a motion in the Common Pleas Court of Ashtabula County on December 12, 1990, seeking to have RMI cited for

contempt for its failure and refusal to comply with the final judgment of the Court of Appeals and its failure and refusal to reinstate Heinonen to his former position with restoration of all seniority, back pay, and benefits.

Heinonen's motion to cite RMI for contempt was heard by the Common Pleas Court, per the Honorable Gary L. Yost, on January 14, 1991. Both parties submitted briefs and oral arguments expressing their respective positions, as set forth above.

On March 21, 1991, Judge Yost entered a judgment entry refusing to cite RMI for contempt. In pertinent part, Judge Yost stated as follows:

> "It is clear to this Court that its prior judgment entered August 5, 1986, is reversed. It is equally clear that the arbitration award of April 29, 1983 confirming plaintiff's dismissal is vacated. Beyond these conclusions, this Court does not have the temerity to hazard an opinion as to what further consequences the Appellate Court intended. Without the wherewithal to interpret the decision of the Court of Appeals as requested by plaintiff, the only issue for determination by this Court is whether the record and evidence herein will sustain a finding of contempt against the defendant. Since it is not clear that the judgment of the Court of Appeals goes beyond vacating the arbitration award, or that it requires the defendant to reinstate the plaintiff to his former position with all seniority and back pay and other benefits, the Court holds that the record and evidence do not sustain a finding of contempt against the defendant." (Appendix, p. A11.)

From that decision by Judge Yost, Heinonen appealed a second time to the Court of Appeals, Eleventh Appellate District. His appeal (No. 91-A-1603) was heard by a panel of three judges, two of whom, Judges Judith A. Christley and Donald R. Ford, were members of the panel that had decided the earlier appeal. Indeed, Judge Christley had written the Court's opinion in the earlier appeal.

The sole issue in the second appeal was what the Court of Appeals had meant when it entered "final judgment for Appellant [Heinonen]" in the earlier appeal. Heinonen contended that the Court of Appeals had intended to enter final judgment in his favor for the relief he had sought in his pleadings and motions, *i.e.*, reinstatement and the restoration of all seniority, back pay, and benefits. RMI contended that the Court of Appeals had merely intended to order a new arbitration on the issue of whether Heinonen's discharge had been lawful.

On March 2, 1992, the Court of Appeals rendered its decision in the second appeal. The decision was unanimous and was again written by Judge Christley (Appendix, p. A4.).

Judge Christley pointed out that in its earlier decision, the Court of Appeals had decided the merits of the grievance. It had held that the public policy of Ohio (as embodied in the Worker's Compensation Law) prohibited Heinonen's discharge. (Appendix, p. A6.) Therefore, no second arbitration of the legality of the discharge was possible and final judgment in favor of Heinonen was required.

Judge Christley acknowledged, however, that the Judgment Entry in the earlier appeal was not clear as to the court's mandate. Judge Christley wrote:

> "Although the Court of Common Pleas judgment was reversed [by this court's earlier decision], this court failed to remand the case for further proceedings. . . .
>
> " . . . This court agrees with the trial court and appellee [RMI] that there can be no finding of contempt, since there was no clear order which appellee [RMI] refused to obey. Therefore, both of appellant's assignments are without merit.
>
> "This is obviously an unsatisfactory result which requires us to revisit and take further action on the original case and judgment entry in Case No. 1294, *Oil, Chemical and Atomic Workers International Union, AFL-CIO, Local 7-629, supra.*" (Appendix, p. A6-A7.)

In accordance with this decision, on the same day, March 2, 1992, the same panel of the Court of Appeals entered a revised Judgment Entry in the earlier appeal (Appendix, p. A2), which read as follows:

> "We hereby vacate our September 30, 1987 mandate in this matter and re-enter judgment reversing the judgment of the trial court and entering judgment in favor of appellant. We also enter judgment in appellant's favor on the issues of reinstatement, seniority, back pay, and other benefits prayed for by appellant. Therefore this case is reversed and remanded to the Common Pleas Court for assignment of this matter to arbitration under the terms of the collective bargaining agreement to determine the specific terms of reinstatement, which

include back pay, seniority, and other benefits contained in appellant's prayer for relief. It is so ordered.

"The Clerk of Courts is ordered to strike the mandate of September 30, 1987 from the record in this matter.

"It is further ordered that the vacated entry is replaced with this judgment entry."

The cumulative effect of the two decisions rendered by the Court of Appeals on March 2, 1992, was to correct the 1987 Judgment Entry by supplying the mandate which was implicit in the 1987 Opinion, but which had not been explicitly stated in the 1987 Judgment Entry. In the 1987 appeal, Heinonen had prayed for reinstatement, restoration of seniority, back pay, and other benefits. In its 1987 decision, the Court of Appeals had reversed the decision of the Common Pleas Court, which had denied that relief, and had entered final judgment for Heinonen, without expressly stating that the final judgment was for the relief sought. The revised Judgment Entry of March 2, 1992, simply expressed the intention of the Court of Appeals in its 1987 decision, which was to enter final judgment in favor of Heinonen for the relief he had sought.

RMI sought to appeal the 1992 opinion and corrected judgment entry to the Ohio Supreme Court. Its application to appeal was denied on July 15, 1992.

RMI now seeks to appeal to this Court. Incredibly, RMI now claims that the *1992* decision of the Court of Appeals, not the *1987* decision, was the one that adjudicated the merits of the grievance. Yet, as the sole basis for

its appeal to this Court, RMI asserts the same ground that it advanced before the Ohio Supreme Court in its appeal of the *1987* decision, where it claimed that the *1987* decision had "improperly" determined the merits of the grievance:

> "REASONS FOR GRANTING THE WRIT
>
> "The Ohio Court of Appeals failed to adhere to the constitutional mandate that federal law controls disputes involving private sector collective bargaining agreements by applying state law in reviewing a private sector labor arbitration award, and by entering a decision on the merits of the underlying grievance." *Petition for a Writ of Certiorari*, p. 9. Compare: Propositions of Law Nos. 1 and 2, p. 6, *supra*.

ARGUMENT

I. THE QUESTION PRESENTED FOR REVIEW DOES NOT ARISE FROM THE JUDGMENT BEING APPEALED FROM.

In its 1987 decision, the Court of Appeals decided the merits of the grievance. There, the Court of Appeals held that the discharge was unlawful under Section 8.21 of the labor agreement; and it held that the discharge was unlawful because it conflicted with the public policy of Ohio as expressed in the Worker's Compensation Law. That decision on the merits of the grievance became final

and binding in 1988, when the Ohio Supreme Court refused to hear RMI's appeal.

To the extent RMI has a complaint that the Court of Appeals erred " . . . by applying state law in reviewing a private sector labor arbitration award and by entering a decision on the merits of the underlying grievance" (*Petition for a Writ of Certiorari*, p. 9), RMI's complaint is with the 1987 decision, not the 1992 decision.

It is too late for RMI to appeal the 1987 decision. That decision is *res judicata*.

II. THE 1987 DECISION OF THE COURT OF APPEALS CORRECTLY APPLIED THE STANDARD MANDATED BY FEDERAL LAW IN DECIDING THE MERITS OF THE GRIEVANCE.

Respondents do not take issue with any of the authorities cited by Petitioner in its Petition. We are certain that the Court of Appeals of Ohio, Eleventh Appellate District, would not take issue with those authorities, either. The Court of Appeals applied the standard of law articulated by these authorities in its 1987 decision, when it overturned the discharge.

It is well-settled that a court must set aside an arbitration award which violates an explicit and well-defined public policy. *W. R. Grace & Company v. Local Union 759*, 461 U.S. 757, 103 S. Ct. 2177, 76 L. Ed. 2d 298 (1983). See also: *United Paper Worker's International Union v. Misco Inc.*, 484 U.S. 29, 108 S. Ct. 364, 98 L. Ed. 2d 286 (1987).

That is precisely what the Court of Appeals did in its 1987 decision. Accord: *Van Waters & Rogers, Inc. v. Local*

Union No. 70, 913 F. 2d 736 (9th Cir., 1990); *Federated Department Stores v. United Food & Commercial Worker's Union, Local 1442*, 901 F. 2d 1494 (9th Cir., 1990); *General Warehousemen & Helpers Local 267 v. Standard Brands, Inc.*, 579 F. 2d 1282 (5th Cir., 1978), cert. dismissed 441 U.S. 957, 99 S. Ct. 2420, 60 L. Ed. 2d 1075 (1979); *Monroe Sander Corp. v. Livingston*, 377 F. 2d 6 (2d Cir., 1967), cert. denied 389 U.S. 31, 88 S. Ct. 97, 19 L. Ed. 2d 89.

III. THE QUESTION PRESENTED FOR REVIEW INVOLVES ONLY AN ISSUE OF JUDICIAL AUTHORITY UNDER STATE LAW AND DOES NOT IMPLICATE FEDERAL OR CONSTITUTIONAL RIGHTS.

Every court has the inherent authority to correct its own judgments to reflect its decision accurately:

> "It is axiomatic that courts have the power and the duty to correct judgments which contain clerical errors or judgments which are issued due to inadvertence or mistake." *American Trucking Associations v. Frisco Transportation Company*, 358 U.S. 133 at 145, 79 S. Ct. 170 at 177, 3 L.Ed. 2d 172 (1958)

This inherent power is codified in Rule 60(A), Ohio (and Federal) Rules of Civil Procedure:[4]

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[4] See: Wright and Miller, *Federal Practice and Procedure*, Section 2854. The provisions of Rule 60(A) are applicable both to judgments of a trial court and to judgments of a court of appeals. *Kinnear-Weed Corporation v. Humble Oil & Refining Company*, 296 F.2d 215 (5th Cir. 1961); *American Trucking Association v. Frisco Trucking Company, supra.*

> "Clerical mistakes in judgments, orders or other parts of the record and *errors therein arising from oversight or omission may be corrected by the court at any time* on its own initiative or on the motion of any party and after such notice, if any, as the court orders." (Emphasis supplied)

In short, a court has inherent authority to correct or revise its judgments to reflect ". . . what the court originally intended to do." *Blanton v. Anzalone*, 813 F.2d 1574 (9th Cir. 1987) at 1577; *In Re: Jee*, 799 F.2d 532 (9th Cir. 1986). Put another way, a court has inherent authority to "invoke Rule 60(A) in order to make a judgment reflect the actual intentions of the court, plus the necessary implications." *Blanton v. Anzalone, supra*, 813 F.2d at 1577; See also: *Jones & Guerrero Company v. Sea Lift Pacific*, 650 F.2d 1072 (9th Cir. 1981).[5]

In the instant case the Court of Appeals merely corrected its earlier judgment to specify the relief granted by its earlier decision, which the Court of Appeals had erroneously failed to describe explicitly. The precise fact pattern now before this Court was presented in *Soo Line Railroad Company v. Escanaba and Lake Superior Railroad Company*, 840 F.2d 546 (7th Cir. 1988). There, the Court held:

> "The judgment entered in this case is defective because it does not specify the relief to which the prevailing parties are entitled. . . . [A] judgment must be self-contained and specify the

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[5] RMI admits that is exactly what was done here: " . . . In this case . . . the Court of Appeals invoked its inherent power to vacate an order on its own motion." (RMI's Memorandum in Support of Jurisdiction filed in Ohio Supreme Court, p. 11.)

> relief awarded; it is not enough to refer parties to the court's opinion. . . .
>
> "The *Soo* is entitled as a matter of course to an order under Fed. R. Civ. P. 60(A) amending the judgment to recite the relief it has obtained." 840 F.2d 546 at 549.

RMI argued below that the Court of Appeals had no authority to correct its 1987 decision five years after that decision became final. That is not what Rule 60(A) says. The Rule says that " . . . errors [in judgments] arising . . . from oversight or omission may be corrected by the court *at any time*. . . . " Any time means *any time*, even years after the original judgment was entered and the litigation was concluded. See, *Panama Processes, S.A. v. Cities Service Company*, 789 F.2d 991 (2d Cir. 1986); *Chavez v. Balesh*, 704 F.2d 774 (5th Cir. 1983); *Jee v. Hanil Bank, Limited*, 799 F.2d 532 (9th Cir. 1986); *Klingman v. Levinson*, 877 F.2d 1357 (7th Cir. 1989); *Kinnear-Weed Corporation v. Humble Oil & Refining Company, supra.*

In short, the Court of Appeals had the inherent authority under state law to correct the mistake in its prior judgment, which arose from oversight, to reflect what the court originally intended to do. As noted above, a court never loses jurisdiction to correct its own judgments.

CONCLUSION

This case does not present any federal or constitutional question, even though RMI has tried diligently to manufacture one. Courts have always had the inherent

power to correct their own judgments. Both the case law and Rule 60(A) (which is a codification of the case law) authorize a court, acting at any time, even acting on its own initiative, and even acting without notice to the parties or a hearing, to correct its own judgments to reflect its original intention.

Indeed, it is hard to imagine that this appeal presents any question of interest to anyone other than the parties. The merits of RMI's discharge of Heinonen were litigated and resolved in the 1987 decision of the Court of Appeals. The only event upon which the within appeal is based is the 1992 action of the Court of Appeals in correcting its 1987 judgment entry. It is hard to imagine that the correction is even of sufficient magnitude to be an appealable order, let alone an order of sufficient magnitude to be litigated in the Supreme Court of the United States.

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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